



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1994

Ms. Jennifer C. Smith
Staff Attorney, Legal Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR94-046

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 22103.

The Texas Natural Resource Conservation Commission (the "commission") has received a request for information relating to its waste tire recycling program. Specifically, the requestor seeks:

- 1) All manifest records for tires received by Environmental Recovery and Safe Tire (for each location if applicable) since the program's inception, through June 30, 1993. The processor number assigned to Environmental Recovery is 79502. For Safe Tire, which has four locations, the processor numbers are as follows:

Safe Tire Midlothian 79504
Safe Tire Odessa 79505
Safe Tire San Antonio 79506
Safe Tire Cleveland 79507

¹We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

- 2) The reimbursement records generated since the January 21, 1993 report through June 30, 1993. The records contain monthly records for each processor and includes shredded waste tire units (WTUs) of PELs, generator and special authorizations. It also lists the total WTUs shredded by each processor, the amount and date of reimbursement, the Texas Water Commission district and the county where the processor is located, and the monthly shredding capacity. For your convenience, I have enclosed as an example one page from the January version of the report I am requesting to ensure that my request is clear.
- 3) The allocation for each registered processor as of January 31, 1993, and as of the most recent revision of those allocation amounts.

You state that the commission has no information responsive to item number 1. The Open Records Act applies only to information in existence and does not require a governmental body to prepare new information. Open Records Decision Nos. 572, 558, 555 (1990). You contend that item 2 is excepted from required public disclosure under section 552.101 of the Government Code and that item 3 is excepted under section 552.106 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that the information requested in item 2 includes "information required to be submitted under Section 361.486(d) of the [Solid Waste Disposal Act] regarding recycling reports, and may not be disclosed according to Section 361.493." Section 361.486(d) of the Health and Safety Code provides that:

On or before January 1, 1994, and on a semiannual basis thereafter, registered processors and storage site owners and operators shall report their recycling, reuse, and energy recovery activities to the commission. The commission by rule shall prescribe the form and other requirements of the report.

Acts 1993, 73d Leg., ch. 899, § 3.09. Section 361.493 provides that:

Information submitted to the commission in accordance with Section 361.477(g) or Section 361.486(a) or (d), *and any report generated by the commission based on the information*, is confidential and is not subject to disclosure under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and the commission shall protect the information accordingly.

Id. (emphasis added).² Because the information requested in item 2 is deemed confidential by law, you must withhold the information under section 552.101 of the Government Code.

Case law and prior published open records decisions do not resolve your final question, whether section 552.106 excepting "[a] draft or working paper involved in the preparation of proposed legislation" would except from disclosure a "list [that] is based on a working draft of proposed [agency] rules and subject to change." Therefore, we do not address that issue in this ruling. A formal open records decision will be issued construing the scope of section 552.106 as it relates to your request. You need not release the information which you claim is excepted by section 552.106 while that decision is pending. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/LBC/rho

Ref.: ID# 22103

Enclosures: Returned documents

²Section 361.477(g) of the Health and Safety Code provides that:

Notwithstanding Section 361.486, the commission may reimburse a processor for shredded scrap tires if the processor has a binding agreement to deliver the shredded scrap tires to a person to recycle or reuse or to use for energy recovery within 180 days after the date of reimbursement.

Acts 1993, 73d Leg., ch. 899, § 3.03. Section 361.486(a) provides that:

On and after January 1, 1996, for all new, amended, and renewal processing registration applications, the processor must identify those persons who will accept the processor's shredded scrap tire pieces for recycling or reuse or to use the shredded scrap tires for energy recovery. The commission shall reimburse a processor for only those shredded tires that the commission determines are committed to a legitimate end user.

Id. § 3.09.

cc: Mr. Jack W. Gullahorn, P.C.
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(w/o enclosures)